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Brief to the Government of Ontario

Respecting

Suggested Revisions to Bill 7

Proposed Ontario Human Rights Code

Ontario Status of
Women Council
June, 1981

SUGGESTED REVISIONS TO BILL 7

PROPOSED ONTARIO HUMAN RIGHTS CODE

BY

THE ONTARIO STATUS OF WOMEN COUNCIL

presented by Linda Silver Dranoff
Vice-Chairperson

PREAMBLE AND SECTION 26(a)

1. We recommend that the phrase "contrary to law" be deleted from paragraph 2 of the Preamble which states

"and whereas it is public policy in Ontario to recognize that every person is equal in dignity and worth, and to provide for equal rights and opportunities without discrimination that is contrary to law."

We recommend that the Preamble to a Human Rights Code is the place for a strong statement of principle. Public policy must recognize that every person is equal in dignity and rights. Even if the rights we are protecting are limited, they should extend equally to everyone without discrimination.

The inclusion of the phrase, "...that is contrary to law" appears to invite discrimination that is not expressly made unlawful. Some treatment is unjust even if the legislature has not got around to prohibiting it.

2. We recommend that the Preamble include a reference to the Canadian Charter of Human Rights, as well as the United Nations declaration, and an acknowledgement that the Human Rights Code must mesh with the provisions of the Charter.
3. We recommend that the Preamble acknowledge the necessity for the Code to be reviewed and revised from time to time to protect newly recognized human rights and needs as they may be promulgated and interpreted in the proposed new federal constitution and charter of rights, and cases resulting from them.

PART I - FREEDOM FROM DISCRIMINATION

Section 1 - Principle: All grounds should be applicable throughout the Code. For instance, public assistance should also be a ground in employment and services. The deletion of a ground in a specific section can be interpreted by the public as a signal that it is "O.K." to discriminate.

Add "without discrimination because of the receipt of public assistance" and "record of offences" to every section.

(Section 1 then becomes the basic section setting out all grounds; i.e., services, goods, facilities, accommodation, contracts and employment.)

Section 2(1) - Principle: Persons should have equal access and equal occupancy rights.

Occupancy of accommodation is too narrow. The clause should at least be expanded to include applying for occupancy. Life together suggested "renting, buying and selling of accommodation."

Section 4(1) - Principle: Persons should have equal access to employment and equal opportunity when employed.

We would like to see protection with regard to recruitment, promotion, and training.

Section 5 - Principle: Every person should have equal access to membership and equal treatment in the enjoyment of membership.



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Section 6(a) - Principle: We approve the principle of including a prohibition on sexual harassment in the Code, but question the wording.

There are three specific points under Section 6:

1. "Persistent" creates a situation in which it could be impossible to prove a case. The "advance" must first be proven to be unwelcome. Then one must prove "persistence" and it is impossible to know how many "solicitations" or "advances" add up to "persistence."
2. "Solicitation" or "advance" does not comprise all of the situations of sexual harassment. Harassment should be the offence. It is a more understandable and understood term than "solicitation" or "advance" and has a clear dictionary meaning, and, moreover, has been defined in the Code itself at Section 9(a) as "engaging in a course of vexatious comment or conduct."
3. "Person in a position of authority" should be clarified to mean a person in a position of authority or his or her agent with the power to affect the person harassed with economic consequences, or the authority to penalize and prevent the conduct.

PART II - INTERPRETATION AND APPLICATION

Section 9(a) - Principle: There should be no mandatory age of retirement, and the lower age of eighteen could create problems for young women.

Age changed to eliminate the upper limit of sixty-five, or remove entirely, and limit only by age of majority in other acts.

(b) (1) - Principle: Height and weight should not be grounds for discrimination in the same manner as a "physical disability" is not a ground for discrimination.

Life Together (page 70,71) suggested this type of interpretation.

(e) We find the definition of "equal" to be confusing.

(f) "Family" should be expanded to include people living in a kinship relationship.

ADDITIONAL DEFINITIONS NEEDED:

"Persons" - throughout the Code, "persons" should also be defined to include "class of persons" (see Section 43(c)) It should be possible for a group of women to bring a complaint to secure a remedy applicable to all women in similar circumstances.

"Employer" - should cover employment agencies and agent of employer.

"Employee" - should this include someone applying for employment?

Section 10 - Principle: There should be very few exceptions where women are prevented from doing any job in our society.

Expand Section 10(a) to include, after the word "reasonable" the words "and necessary." The onus should be on the employer to prove that the discrimination is bona fide.

Section 14 - Principle: It is the duty of the Commission to ensure that employers pursue policies and practices which promote equality for women and, in that connection, the Commission shall have the obligation to monitor the policies and practices of Ontario employers which affect female employees.

We suggest the addition of the words "bona fide" after the word "special" in the second line.

We suggest that the phrase "disadvantaged persons or groups" in the fourth and fifth lines, to be consistent with Section 26(c), should be changed to "a group or class of persons."

Section 14(2) We suggest that the word "may" in this sentence be changed to the word "shall."

Section 14(5) We suggest that the Ontario government or its agents should not be exempted from a review of an affirmative action plan by the Commission.

Section 18(1) The use of the term "public decency" could be interpreted broadly; i.e., girls should not play certain sports with boys because of public decency regarding body contact, change room facilities, or whatever. Could this be limited by definition or another term used?

Section 19 - Principle: The only permitted discrimination in occupancy should occur when the owner is sharing bathroom, entrance or kitchen facilities.

If the dwelling units are completely separate, there should be no reason to discriminate on the basis of sex, marital status or family.

Section 23 - Principle: The Ontario Government should undertake a program of contract compliance in order to ensure that those persons in receipt of public funds are operating in compliance with the equal opportunity goals of the province.

23(3) The sanction here is much too harsh. Rather than a "refusal to enter into any further contract" would it not be better to give the person a chance to shape up through an affirmative action plan. Also, since Section 23 does not discuss affirmative action programs, this would be a good chance to introduce them here, and at least it would be a start toward contract compliance.

PART III - ONTARIO HUMAN RIGHTS COMMISSION

Section 26 - Principle: Affirmative action in Ontario should be used as often as possible by the Commission as a remedy for redressing the unequal position of women in Ontario society.

The Commission should have the power "to recommend or initiate the introduction and implementation of bona fide special plans.....to encourage the recruitment, hiring, training or promotion of members....

26(c) In this section, add power to monitor such programs by the Commission for a period of several years.

PART IV - ENFORCEMENT

Section 30(3)(b) - Principle: The Code should clearly set out the Commission's powers of investigation.

Instead of "anything" in the second line of the section, we could be more specific as in the Saskatchewan Code, and put in the following:

- (a) demand the production of and inspect all or any of the books, documents, correspondence or records of the person whose conduct is the subject of the complaint;
- (b) require production of and examine employment applications, payrolls, records, documents, writings and papers or copies thereof in the possession of any person; and
- (c) obtain information or take extracts from or make copies of any items mentioned in (a) and (b).

ADDITIONS TO THE ENFORCEMENT SECTION

In order to strengthen the powers of the Commission to investigate, a further subsection, as in the Saskatchewan Code, should be added:

"The Commission or any person designated by the Commission may, where any person has refused or failed to comply with a demand, requirement or request (under the above subsections) upon application ex parte request a judge of the Supreme Court to grant an order requiring the person

whose conduct is the subject of the complaint or any person who it appears has possession of any items described (in the above subsections) to immediately produce those items to the Commission or its designate, and the judge may make any other order that he/she considers necessary to enforce the provisions of (the above subsections)."

Section 34(1) - Principle: It should be mandatory that the Commission reconsiders decisions in accordance with the principles of natural justice.

In Bill 209, the word "may" in the first line of this section was a "shall."

Section 36(2)(b) Complainant is only singular. Will this also cover complainants with regard to groups of complaints?

Section 36(2)(f)) This section should be expanded to include
and)
Section 38(4)(a)) sexual harassment. We have some concerns
about the phrases "know of" or "ought
reasonably to have known of" the discrimi-
nation.

Section 38(1)(a) Requires clarification. We suggest the addition
of these words: "...without restricting the
generality of the foregoing, require the party,
in consultation with the Commission, to take
measures including adoption of a program mentioned
in Section 14, to prevent the same or similar
contravention occurring in the future."
(This is taken from the Saskatchewan Human Rights
Code.)

Section 41 - Principle: That penalty should indicate that the
Ontario Government considers breach of
the Code to be a serious offence.

We would suggest the following wording: "Any person
who is convicted of an offence mentioned in Section 8,
Subsection 6 of Section 30, or an order of a Board
of Enquiry, and who is:

- (a) an individual is liable to a fine of not more
than \$25,000; and
- (b) a person other than an individual is liable to
a fine of not more than \$100,000.

Section 41(2) We suggest that the Commission should "notify" rather than seek the consent of the Attorney General when there is an intent to prosecute.

SECTIONS WHICH SHOULD BE ADDED TO THE PROPOSED CODE

1. Equal Value

The Federal Human Rights Commission and the Quebec Human Rights Code include a provision for equal pay for equal value. This principle could easily be included in this instrument.

2. Injunctions (see Saskatchewan Code, Section 38(1))

"Where a person has been convicted of an offence under this Act, the Commission may apply by way of notice of motion to a judge or the court for an order enjoining that person from continuing or repeating the offence, and the judge may make any order that he/she considers fit."

3. Sexist Language

We have a unique opportunity here to eliminate sexist language and to show some leadership on this issue, and we recommend that the language of the bill be non-sexist. We have included a copy of the Council's document, "Words that make Women Disappear" as an indication of our position on this point.

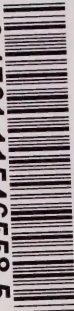
4. Separate Cause of Action

It should be made clear that breach of the Ontario Human Rights Code also entitles a complainant to bring a case before the courts for compensation as an alternative to only taking it before the Commission.

5. Section 9 - Definition

We recommend that the Section 9 - Definition section be applicable to the entire Code.

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Section 2 - Definition

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applicable to the entire Code.